

PATENT  
540606-2001**REMARKS**

Reconsideration and withdrawal of the rejections of the application is respectfully requested in view of the amendments, remarks and enclosures herein.

**I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 15-17, 19-21, 23-35 are now pending. Claims 20 and 29-34 have been amended, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are and were in full compliance with the requirements of 35 U.S.C. §112. In addition, the amendment and remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112; but rather the amendments and remarks herein are made simply to round out the scope of protection to which Applicant is entitled. Support for the amended claims is found throughout the specification, specifically on page 15, line 12.

**II. THE REJECTIONS UNDER 35 U.S.C. §112 ARE OVERCOME**

Claims 29-34 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant respectfully disagrees.

Specifically, as to claims 29-33, the Office Action states that the phrase "wherein the polyester fiber and the acetate fiber are not microfibers" is not supported by the specification. The claims have been amended herein to specify that the polyester fiber is of about 70-300 denier, which is specifically supported by the specification, for example, at page 15, line 12. Accordingly, the rejection is now moot.

Furthermore, as to claim 34, the Office Action states that the phrase "the polyester fiber and acetate fiber are entwined by air-entanglement such that the resulting combination comprises only acetate fibers around a polyester fiber core" is not literally supported by the text of the specification and requests clarification as to the support for the phrase. The claim has been amended herein to recite "wherein the polyester fiber and the acetate fiber are entwined by air-entanglement and the resulting combination is woven or knit into the odor-reducing fabric."

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Support for the recitation is found in the specification at page 16, lines 16-20. Accordingly, the rejection is now moot.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §112, first paragraph, are respectfully requested.

### III. THE ART REJECTIONS ARE OVERCOME

Claims 15 – 16, 19, 23, 25 - 28 and 35 were rejected under 35 USC 103(a) as allegedly being unpatentable over Clarke (US 6,258,455). Claims 20 – 21 and 24 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Clarke (US 6,258,455) in view of Newman (US 6,000,057). Claims 15 – 17, 19, 23, 25 – 33 and 35 are rejected under 35 USC 103(a) as allegedly being unpatentable over Gurian (US 5,856,005). And, claims 20 – 21 and 24 were rejected under 35 USC 103(a) as allegedly being unpatentable over Gurian (US 5,856,005) in view of Newman (US 6,000,057). The rejections are respectfully traversed.

The Examiner respectfully reminded that for a Section 103 rejection to be proper, there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings to arrive at the claimed invention. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, the Examiner is respectfully reminded that “obvious to try” is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, the Examiner is additionally respectfully reminded that for the Section 103 rejection to be proper, **both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants’ disclosure.** *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

Furthermore, the Examiner is also respectfully reminded that MPEP 2143.01 mandates that for a Section 103 rejection, there must be some suggestion or motivation to modify reference teachings, and, that MPEP 2143.02 further mandates that for a section 103 rejection, there must be a reasonable expectation of success.

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And the Examiner is respectfully reminded that 35 USC 102 begins with the mandate that the Applicant shall be granted a patent, i.e. that the PTO bears burden to fully support any rejection, that the standard is a "preponderance of the evidence standard", and that if the Applicant merely meets the rejection (or even ever so slightly tips the scales in his favor), the PTO must allow the application and issue the patent.

Turning first to the rejections based on Clarke, Applicants acknowledge that Clarke relates to an antimicrobial material having at least one yarn having fine fiber of 1.0 denier or less, wherein the material is to be used for cleaning. Applicant again respectfully submits that Clarke, in requiring the use of microfibers in the material, inherently provides a material that would not be suitable for use in the present invention.

Indeed, the amendments herein have specified that the polyester fiber of the odor-reducing fabric of the present invention is about 70-300 denier, which excludes microfibers as a microfiber by definition is a fine fibers of 1.0 denier. Accordingly, Clarke does not teach the present invention; nor does Clarke provide any motivation or suggestion to modify prior art teaching to arrive at the present invention.

Furthermore, Applicant respectfully submits that neither is there any motivation for the combination of Newman and Clarke, nor is there a likelihood of success indicated by either document.

Newman involves "hunting apparel comprising an article of clothing constructed with an inner layer of an antimicrobial fabric and outer layer of an odor-absorbing material." The Office Action maintains that because the material of Clarke is "effective for preventing the growth and reproducing of odor-producing bacteria on the body, and thereby reducing body odor" it would be obvious to use the material of Clarke in the hunting apparel of Newman. Applicant again respectfully disagrees. However, as discussed above, Clarke relates to a material made of microfibers, and the amendments to the claims herein recite that the polyester fiber of the present invention is about 70-300 denier, which excludes microfibers as a microfiber by definition is a fine fibers of 1.0 denier. Newman does not teach or suggest the use of acetate and polyester fibers which are not microfibers, such that Newman does not remedy the deficiencies of Clarke.

Turning now to the rejections based on Gurian, the Office Action again admits that Gurian fails to disclose that the fabric can be an odor-reducing fabric but states that Gurian meets all of the claimed structural and/or chemical limitations as Gurian teaches the use of at least 5%

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by weight of anti-microbial filaments and provides no upper limit for the weight percentage of the anti-microbial filaments. The Office Action further notes that the "amount of antimicrobial acetate filaments is a result effective variable" and that it would have been obvious to one of skill in the art to make a fabric comprising at least 25% by weight of anti-microbial acetate filaments, as finding such an optimum value involves only routine skill in the art. Applicants respectfully disagree. As previously stated, Gurian relates not only to an anti-microbial fabric, but to a flame-retardant fabric. Accordingly, the fabric of Gurian necessarily includes two such "result effective variables". Accordingly, one of skill in the art who wished to modify the fabric of Gurian would have to consider both variables, as a change in the amount of anti-microbial filaments necessarily indicates a change in the percent by weight of the flame-retardant filaments. Indeed, the presence of two such variables that are inter-related through the percent by weight of the resulting fiber would require much more research and experimentation than would be considered routine as one would be faced with optimizing not only the anti-microbial properties, but one would have to do so without sacrificing the flame-retardancy of the material. Accordingly, Gurian cannot be enabled for a fabric containing at least 25% by weight acetate as such a high percentage of acetate would likely prevent the fabric from retaining the flame-retardant properties required by Gurian, and in any event, the experimentation needed to arrive at such a modification would be significantly more than what can be considered routine.

The Office Action admitted that claim 34 was not obvious over Gurian. It is respectfully submitted that claim 34 has been amended herein to obviate the §112 rejection, and the amended language maintains the distinction between the present invention and Gurian. Specifically, claim 34 has been amended to recite that "the polyester fiber and the acetate fiber are entwined by air-entanglement and the resulting combination is woven or knit into the odor-reducing fabric. Indeed, claim 34 requires that the acetate and polyester fibers be air-entangled such that the resulting yarn is woven or knit into the fabric of the present invention. Notably, there is no additional processing of the yarn prior to the making of the fabric, such as a second air-entanglement process that adds another fiber to the yarn. In contrast, Gurian states that "The yarn 10 was co-air-textured with base filaments (which form the core 12) formed of a plurality of the permanently flame-retardant filaments 16 and a pair of effect filaments (which form the sheath 14)--one of the plurality of permanently flame-retardant filaments 16 and one of the plurality of permanently anti-microbial filaments 18." Namely, Gurian teaches that the polyester

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and acetate are first entwined, and then the polyester/acetate blend is air-entangled with polyester such that the resulting combination comprises a polyester core have bound thereto a polyester/acetate blend. Gurian does not teach or suggest that the polyester fiber and the acetate fiber are entwined by air-entanglement and the resulting combination is solely utilized in making the resulting fabric, and therefore does not anticipate claim 34.

As to claim 35, the Office Action states that Gurian teaches only that the anti-microbial effect lasts for 100 commercial launderings, not that such an effect would not be present after 200 commercial launderings. Applicant respectfully submits that such an interpretation of Gurian is reading additional elements into the teachings of Gurian. Nowhere in Gurian is it taught that the anti-microbial effect lasts for 200 washings. To read such an embodiment into Gurian is to significantly broaden the disclosure therein without any support for so doing. Although it is theoretically possible that Gurian's fabric would be anti-microbial after 200 launderings, it is not explicitly disclosed, nor is it likely, and one of skill in the art would not read such an embodiment into the specification of Gurian, especially as doing so would double the effectiveness of the material as explicitly taught in Gurian. Accordingly, Gurian does not disclose a fabric that is anti-microbial after 200 launderings, and therefore the present invention is not taught or suggested by Gurian.

As none of the deficiencies of Gurian are overcome by the teachings of Newman, the present invention is patentable and nonobvious over Gurian, either alone or in any combination.

It is respectfully asserted that by no less than evidence and assertions equal to that provided by the PTO in making the Section 103 rejections - and indeed by a preponderance of the evidence assertions beyond that provided by the PTO in making the Section 103 rejections - Applicant has addressed and overcome the Section 103 rejections.

Therefore, for all of the reasons set forth above, and the record overall, the Section 103 rejections cannot stand; and, reconsideration and withdrawal of the rejections under 35 USC 103 are respectfully requested.

#### **REQUEST FOR INTERVIEW**

If any issue remains as an impediment to allowance, prior to issuance of any paper other than a Notice of Allowance, an interview, is respectfully requested, with the Examiner and her

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supervisor, and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

**CONCLUSION**

In view of the remarks herewith and those of record, the application is in condition for allowance. Favorable reconsideration of the rejections of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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